

§ 890.1062

knowingly fails to provide claims-related information as otherwise required by law.

§ 890.1062 Deciding whether to impose penalties and assessments.

(a) *Authority of debarring official.* The debarring official has discretionary authority to impose penalties and assessments in accordance with 5 U.S.C. 8902a and this subpart.

(b) *Factors to be considered.* In deciding whether to impose penalties and assessments against a provider that has committed one of the violations identified in § 890.1061, OPM must consider:

(1) The number and frequency of the provider's violations;

(2) The period of time over which the violations were committed;

(3) The provider's culpability for the specific conduct underlying the violations;

(4) The nature of any claims involved in the violations and the circumstances under which the claims were presented to FEHBP carriers;

(5) The provider's history of prior offenses or improper conduct, including any actions that could have constituted a basis for a suspension, debarment, penalty, or assessment by any Federal or State agency, whether or not any sanction was actually imposed;

(6) The monetary amount of any damages, losses, and costs, as described in § 890.1064(c), attributable to the provider's violations; and

(7) Such other factors as justice may require.

(c) *Additional factors when penalty or assessment is based on provisions of § 890.1061(b) or (c).* In the case of violations involving false or misleading statements or the failure to provide claims-related information, OPM must also consider:

(1) The nature and circumstances of the provider's failure to properly report information; and

(2) The materiality and significance of the false statements or misrepresentations the provider made or caused to be made, or the information that the provider knowingly did not report.

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§ 890.1063 Maximum amounts of penalties and assessments.

OPM may impose penalties and assessments in amounts not to exceed those set forth in U.S.C. 8902a(d).

§ 890.1064 Determining the amounts of penalties and assessments to be imposed on a provider.

(a) *Authority of debarring official.* The debarring official has discretionary authority to set the amounts of penalties and assessments in accordance with law and this subpart.

(b) *Factors considered in determining amounts of penalties and assessments.* In determining the amounts of penalties and assessments to impose on a provider, the debarring official must consider:

(1) The Government's interests in being fully compensated for all damages, losses, and costs associated with the provider's violations, including:

(i) Amounts wrongfully paid from FEHBP funds as the result of the provider's violations and interest on those amounts, at rates determined by the Department of the Treasury;

(ii) All costs incurred by OPM in investigating a provider's sanctionable misconduct; and

(iii) All costs incurred in OPM's administrative review of the case, including every phase of the administrative sanctions processes described by this subpart;

(2) The Government's interests in deterring future misconduct by health care providers;

(3) The provider's personal financial situation, or, in the case of an entity, the entity's financial situation;

(4) All of the factors set forth in § 890.1062(b) and (c); and

(5) The presence of aggravating or less serious circumstances, as described in paragraphs (c)(1) through (c)(7) of this section.

(c) *Aggravated and less serious circumstances.* The presence of aggravating circumstances may cause OPM to impose penalties and assessments at a higher level within the authorized range, while less serious violations may warrant sanctions of relatively lower amounts. Paragraphs (c)(1) through (c)(7) of this section provide examples of aggravated and less serious